

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID BUCKLEY, on behalf of himself, the Robert L. McKissick Irrevocable Trust and the Brenda L. Buckley Revocable Trust, REX WELDON, on behalf of Nancy Weldon, Robert Clark Weldon and the Robert Clark Weldon and Nancy Weldon Trust, JILL SCHUNEMAN, on behalf of herself and the Jill Schuneman Living Trust, and LYLE BREHM, on behalf of Willard F. Brehm, Gladys M. Brehm, the Willard F. Brehm Revocable Trust and the Gladys M. Brehm Revocable Trust, collectively on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

REBECCA ENGLE, BRIAN SCHUSTER, ENGLE & SCHUSTER FINANCIAL, Inc.; AMERICAN CAPITAL CORP., ROYAL PALM CAPITAL GROUP, Inc.; GERALD PARKER; and LIANA DOBARGANES HARRINGTON, in her capacity as sole heir or putative personal representative of the estate of Patrick Harrington, deceased;

Defendants.

8:07CV254

MEMORANDUM AND ORDER

This matter is before the court on the plaintiff's motion to approve distribution of remaining class action settlement funds, [Filing No. 523](#).¹ There have been no objections to the motion.

This court has earlier approved settlements with several defendants. See [Filing Nos. 495](#) (defendant Geraldine Magalnick); [489](#) (defendant John Boyce); [459](#) (defendant Stark Winter Schenkein, LLP); [414](#) (defendant Peter Kirschner); [302](#) (defendants Capital

¹ The plaintiffs were ordered to file a status report stating whether there would be further proceedings in this action, and, if not, to file a motion for final approval of class action settlement by April 24, 2015. In response to that order, the plaintiffs filed the present motion. Accordingly, the court will treat this motion as a motion for Final Approval of class action settlement.

Growth Financial and Alan and Michael Jacobs). Co-lead counsel J.L. Spray and Gregory C. Scaglione have shown by affidavit that they have complied with the court's earlier Memorandum and Order on distribution, [Filing No. 506](#), and have mailed partial distribution checks to persons identified as eligible. [Filing No. 524-1](#), Index of Evid., Ex. 1, Affidavit of J.L. Spray ("Spray Aff.") at 2; see also [Filing No. 510](#), Affidavit of J.L. Spray. The record shows that co-lead counsel are pursuing claims on behalf of class members against defendant Rebecca Engle in the Chapter 11 Bankruptcy presently proceeding in Arizona, Case No. 04:08-bk-06355, and believes that allowed claims will be paid out through the bankruptcy proceeding, separate and apart from any distributions in this action. See [Filing No. 516](#), Status Report at 2. It thus appears that final distribution is appropriate.

Co-lead counsel have shown that there remains in the Mattson Ricketts Trust Account a balance of \$113,790.98, representing \$97,911.25 remaining of the common fund, plus \$14,379.73 in judgment monies received from Geraldine Magalnick and \$1,500.00 judgment monies received from John Boyce. See [Filing No. 523](#), Motion at 3. Co-lead counsel state that they have not yet requested attorney's fees as to either the \$14,379.73 collected from Geraldine Magalnick nor the \$1,500.00 collected from John Boyce. *Id.* at 3. Lead plaintiffs request attorneys' fees in the amount of \$5,293.24, which is one-third of the recovered funds, in connection with the recovery from those defendants.

This court earlier approved attorneys' fees in the amount of one-third of the settlement proceeds in connection with partial settlements with other defendants. See [Filing Nos. 471](#), Memorandum and Order; [335](#), Memorandum and Order. For the reasons stated in those orders, the court finds an additional award of fees is appropriate.

Lead plaintiffs also seek reimbursement of expenses in the amount of \$5292.85, plus an additional \$200.00 for mailings, for a total of \$5,492.85. They have submitted a

summary of expenses and costs. [Filing No. 523](#), Motion, Ex. A at 1-2. The court has reviewed the submissions and finds that the costs and expenses incurred, including PACER fees, postage, mileage, document reproduction, accounting fees, and other expenses, are fair and reasonable and were necessary to prosecute the claims on behalf of the class.

Accordingly,

IT IS ORDERED:

1. Attorneys' fees in the amount of \$5,293.24 and costs and expenses in the amount of \$5,492.85 are approved and awarded.
2. Co-lead counsel may withdraw attorneys' fees in the amount of \$5,293.24 and costs and expenses in the amount of \$5,492.85 from the settlement proceeds maintained in Mattson Ricketts' trust account.
3. Co-lead counsel shall distribute the remaining Settlement Funds to Class members whose Proofs of Claims have been accepted on a pro rata basis, in accordance with this court's earlier orders.
4. The court retains jurisdiction to enforce the orders and judgments entered in this action.
5. This action is dismissed.

DATED this 12th day of June, 2015

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge